

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

Chapter 11

Pelican Real Estate, LLC, et al.

Case No.: 6:16-bk-03817-CCJ

Debtors.

Jointly Administered with:
Case No.: 6:16-bk-03820;
Case No.: 6:16-bk-03822;
Case No.: 6:16-bk-03823;
Case No.: 6:16-bk-03825;
Case No.: 6:16-bk-03827;
Case No.: 6:16-bk-03828;
Case No.: 6:16-bk-03829; and
Case No.: 6:16-bk-03830

**LIQUIDATING TRUSTEE'S MOTION TO COMPROMISE
CONTROVERSY WITH ENERGY CAPITAL WILCOX, J.V.**

NOTICE OF OPPORTUNITY TO
OBJECT AND REQUEST FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 21 days from the date set forth on the attached proof of service, plus an additional three days for service if any party was served by U.S. Mail.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at George C. Young Federal Courthouse, 400 W. Washington Street, Orlando, FL 32801, and serve a copy on the movant's attorney Broad and Cassel LLP, Attn: Michael D. Lessne, 100 S.E. 3rd Avenue, Suite 2700, Fort Lauderdale, FL 33394, and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing or consider the response and grant and deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

Maria M. Yip, Liquidating Trustee of the Smart Money Liquidating Trust (the “**Liquidating Trustee**”), pursuant to Bankruptcy Rule 9019, Local Rule 2002-4 and the *United States Bankruptcy Court, Middle District of Florida Use of Negative Notice* list (effective as of March 1, 2017), and Section 4.01(v) of the Liquidating Trust Agreement (ECF No. 449), moves the Court for approval of the compromise of the Liquidating Trustee’s disputes with Energy Capital Wilcox, J.V. (“**ECW**”), and states:

Brief Background

1. On June 8, 2016 (the “**Petition Date**”), the Debtors¹ filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors are jointly administered (ECF No. 25), and on December 28, 2016, were substantively consolidated *nunc pro tunc* to the petition date (ECF No. 303). On February 15, 2017, the Court entered an order (the “**Confirmation Order**”) (ECF No. 414) confirming the Debtors’ plan of liquidation, the terms of which are reflected in the Second Amended Plan of Liquidation (ECF No. 400) (the “**Plan**”). On March 21, 2017, in accordance with paragraph 19 of the Confirmation Order, each of the Debtors’ cases were closed, except for the lead case *Pelican Real Estate LLC*, Case No. 6:16-bk-03817-CCJ, which remains open.

2. On the effective date of March 2, 2017 (ECF No. 428), the Smart Money Liquidating Trust (the “**Liquidating Trust**”) came into existence, and the Liquidating Trust

¹ The Debtors (with the last four digits of their taxpayer identification numbers) are: (i) Pelican Real Estate, LLC (6190); (ii) Pelican Portfolios, LLC (2896); (iii) Pelican Management, LLC (3093); (iv) Smart Money Secured Income Fund, LLC (0664); (v) Smart Money Secured Income Fund Manager, LLC (2762); (vi) Turnkey Investment Fund, LLC (9311); (vii) Turnkey Investment Fund Manager, LLC (1580); (viii) Accelerated Asset Group, LLC (6166); and (ix) SMFG, Inc. (9753).

Assets² transferred to the Liquidating Trust. *See* Plan, Pars. 1.40-1.42 and 6.3. The Liquidating Trust is governed by the Liquidating Trust Agreement (ECF No. 449) and Maria M. Yip is the Liquidating Trustee. *Id.*

3. The Liquidating Trust Agreement provides that the Liquidating Trustee shall have the power to, among other things, (a) liquidate the Liquidating Trust Assets, (b) take actions reasonably necessary or appropriate to effectuate and implement the terms of the Plan, (c) protect and enforce the rights to the Liquidating Trust Assets, (d) compromise and settle claims in favor of and against the Liquidating Trust, and (e) exercise all powers vested in Debtors pursuant to the Bankruptcy Code as may be necessary to carry out the provisions of the Plan. *See* Liquidating Trust Agreement, Sec. 4.01(i), (iii), (v), (vi), and (xii).

Debtors' Investments in ECW

4. The Debtors' investments in oil and gas are described in paragraphs 144 through 167 of the Examiner's Report (ECF No. 262).

5. The Debtors Smart Money Secured Income Fund, LLC ("**SIF**") and Turnkey Investment Fund, LLC ("**TIF**") together invested more than \$2.4 million to acquire 40 Joint Venture Participation Units (a 42.471% interest) in ECW (the "**JV Interests**").³

6. ECW owns oil and gas wells in Bee County, Texas.

7. Energy Capital Fund, LLC, a Texas limited liability company, is the Managing Venturer under the Joint Venture Agreement for ECW (the "**JV Agreement**").

² Defined in Paragraph 1.39 of the Plan as "all Property of the Estate, less the Smart Money Insurance Assets." The Smart Money Insurance Assets consist of certain furniture, fixtures, and equipment which are not relevant for purposes of this motion. *See* Plan, Par. 1.65.

³ As described in the Examiner's Report, the Debtor TIF set up its own joint venture called "Turnkey WBCT #3 JV" in an apparent effort to sell the expected cash flows from ECW to TIF's own joint venturers.

8. On May 20, 2016, a few weeks before the Petition Date, ECW issued a capital call to the joint venturers of ECW, requesting a total of \$209,593.95 from the Debtors. ECW has asserted (a) that the capital call was the result of the collapse in oil prices experienced two weeks after commencing operations, (b) that all joint venturers of ECW other than the Debtors paid their share of the capital call, and (c) that the Debtors' failure to pay the capital call has prevented ECW from completing the improvements necessary to make full use of the lease interests as originally contemplated so that production has not yet reached intended levels. *See* ECF No. 629, Pars. 1-3.

9. ECW has informed the Liquidating Trustee that it believes that once it resolves its disputes with the Liquidating Trustee, brings on a new joint venturer to acquire the Debtors' interests and pay the capital call, and raises additional funds that it will be able to complete its improvements and projects increased production levels and profitability to its joint venturer investors.

Dispute with ECW and Settlement

10. The Liquidating Trustee asserts claims arising out of the transactions and dealings between ECW and SIF and TIF, including, but not limited to, various tort claims.

11. ECW and related parties Energy Capital Fund, LLC, SRS Properties, LLC, Daniel Smith (the "**ECW Parties**") dispute the Liquidating Trustee's claims and asserts its own claim based on the unmet capital contribution.

12. On January 17, 2018, the Liquidating Trustee's special counsel Douglas Daniels of Daniels & Tredennick, LLP took a Rule 2004 Examination of ECW and of related company SRS Properties, LLC. *See* ECF No. 687 and 688.

13. Following settlement discussions taking place after the examinations, the Liquidating Trustee and ECW have agreed to resolve their disputes in the Settlement Agreement (the “Agreement”) set forth in **Exhibit A**, which principally⁴ provides that:

a. ECW will pay the sum of \$12,500 to the Liquidating Trustee in satisfaction of all claims the Liquidating Trust and the Debtors may have against the ECW Parties upon the date that an order of the Bankruptcy Court approving the Liquidating Trustee’s sale of the JV Interests becomes final and non-appealable (the “**Effective Date**”).

b. On the Effective Date, the Liquidating Trustee will release the ECW Parties and the ECW Parties will release the Liquidating Trustee.

c. The ECW Parties will cooperate in the utmost good faith with the sale of the JV Interests by the Liquidating Trustee.

d. ECW will extend the deadline for the Liquidating Trustee to assume or reject the JV Agreement until the later of the sale of the JV Interests or 120 days from the date of an order approving sale procedures for the sale of the JV Interests.

e. The Liquidating Trustee will file a motion to sell the JV Interests by March 21, 2018.

f. On the Effective Date, all agreements between the Liquidating Trustee and ECW shall be terminated and there shall be no further obligations except as provided in the Settlement Agreement.

Legal Analysis

14. “[A]pproval of a settlement in a bankruptcy proceeding is within the sound

⁴ To the extent that there is any conflict or inconsistency between this Motion and the terms of the Agreement, the terms of the Agreement shall control.

discretion of the court....” *In re Arrow Air, Inc.*, 85 B.R. 886, 891 (Bankr. S.D. Fla. 1988), citing *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F. 2d 599, 602-03 (5th Cir. 1980), *Anaconda-Ericsson, Inc. v Hessen (In re Teltronics Services Inc.)*, 762 F.2d 185, 189 (2d Cir. 1985), and *In re Prudence Co.*, 98 F.2d 559 (2d Cir. 1938), *cert. denied sub nom. Stein v. McGrath*, 306 U.S. 636 (1939).

15. In assessing whether a proposed settlement should be approved pursuant to Bankruptcy Rule 9019, the court should consider (a) the probability of success in litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *Wallis v. Justice Oaks II, Ltd. (In re Justice Oaks II, Ltd.)*, 898 F. 2d 1544, 1549 (11th Cir. 1990), *cert. denied*, 498 U.S. 959 (1990).

16. In analyzing the proposed settlement agreement, the applicable test is whether the proposed settlement falls below “the lowest point in the range of reasonableness.” *Martin v. Pahiakos (In re Martin)*, 490 F. 3d 1272, 1275-76 (11th Cir. 2007); *Anaconda Ericsson, Inc. v. Hessen (In re Teltronics Services Inc.)*, 762 F.2d 185, 189 (2d Cir. 1985); *Newman v. Stein*, 464 F. 2d 689, 693 (2d Cir.), *cert. denied*, 409 U.S. 1039 (1972); *Cosoff v. Rodman (In re W.T. Grant Co.)*, 699 F.2d 599, 608 (2d Cir.), *cert. denied*, 464 U.S. 822 (1983).

17. The Liquidating Trustee presents the following in support of this motion, for the court's consideration in its evaluating the proposed settlement:

Probability of Success: The Liquidating Trustee’s counsel believes that the claims against ECW will be difficult to prosecute as they are fact-intensive and the damages are unclear. In addition, the expense and the difficulty of litigating the claims, and concerns

regarding collectability and the ability to sell the JV Interests weigh heavily in favor of the settlement.

Complexity and Likely Duration and Expenses: This dispute is complex and could require the depositions of numerous individuals, as well as potentially requiring experts. Litigation of the dispute could take many months and could become very costly to the estate.

Other Factors: The Liquidating Trustee believes that this settlement will maximize the value of the JV Interests.

18. The Liquidating Trustee submits that based upon the test set forth above, the proposed settlement is reasonable and in the best interests of the estate.

WHEREFORE, the Liquidating Trustee seeks the entry of an order (in the form attached) granting this motion and approving the settlement between the parties.

Dated: March 15, 2018

BROAD AND CASSEL LLP
Counsel for the Liquidating Trustee
100 S.E. 3rd Avenue, Suite 2700
Fort Lauderdale, FL 33394
Ph. (954) 764-7060—Fax (954) 761-8135

By: /s/ Michael D. Lessne
Michael D. Lessne
Fla. Bar No. 73881
mlessne@broadandcassel.com

CERTIFICATE OF SERVICE

I CERTIFY that a true copy of this motion has been furnished (i) via transmission of Notices of Electronic Filing on all counsel of record or pro se parties identified on the CM/ECF service list maintained by the Court in this case (ii) by email to Bill Maloney at bill.maloney@bmaloney.com, Brian Fouts at bmfouts65@hotmail.com, Russell Chalk, Esq. at russchalk@earthlink.net; and (iii) by first class U.S. mail, postage prepaid, on all parties shown on the manual notice list below, on this 15th day of March, 2018.

/s/ Michael D. Lessne

Michael D. Lessne

Electronic Mail Notice List

The following is the list of **parties** who are currently on the list to receive email notice/service for this case.

- Joel M Aresty aresty@icloud.com
- David W Baddley baddleyd@sec.gov
- Leyza F Blanco leyza.blanco@gray-robinson.com, Jennifer.Mahaffey@gray-robinson.com; Amador.Ruiz-Baliu@gray-robinson.com
- Lisa M Castellano lcastellano@bplegal.com, kmurphy@bplegal.com; kpacifico@bplegal.com
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- Elizabeth A Green egreen@bakerlaw.com, jdriggers@bakerlaw.com; OrlBakerDocket@bakerlaw.com; bakerlaw@ecf.courtdrive.com
- Jill E Kelso jill.kelso@usdoj.gov
- Andrew V Layden alayden@bakerlaw.com, jdriggers@bakerlaw.com; OrlBakerDocket@bakerlaw.com
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- Rinky S Parwani rinky@parwanilaw.com, kindra@parwanilaw.com
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- United States Trustee - ORL USTP.Region21.OR.ECF@usdoj.gov
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lnegron@broadandcassel.com; choward@broadandcassel.com
- Richard B Webber rwebber@zkslawfirm.com,
jconcannon@zkslawfirm.com; service@zkslawfirm.com

Manual Notice List (via first class U.S. Mail)

All parties listed on the attached matrix

UNITED STATES BANKRUPTCY COURT
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Case No.: 6:16-bk-03827;

Case No.: 6:16-bk-03828;

Case No.: 6:16-bk-03829; and

Case No.: 6:16-bk-03830

**ORDER GRANTING LIQUIDATING TRUSTEE'S MOTION
TO COMPROMISE CONTROVERSY WITH ENERGY CAPITAL WILCOX, J.V.**

THIS CASE came before the court on the *Liquidating Trustee's Motion to Compromise Controversy with Energy Capital Wilcox, J.V.* (ECF No. __) (the “**Motion**”). The Motion was served on all interested parties with the Local Rule 2002-4 negative notice legend informing the parties of their opportunity to respond within 21 days of the date of service, no party filed a response within the time permitted, and the Court therefore considers the matter to be unopposed.

The Court having reviewed the Motion and the settlement attached to the Motion (the “**Settlement**”) finds that the Settlement is in the best interests of the estate. Accordingly,

It is **ORDERED**:

1. The Motion is **GRANTED** and the Settlement is **APPROVED**.
2. The parties are directed to comply with the terms of the Settlement.
3. The Court retains jurisdiction to enforce the Settlement.

Attorney Michael D. Lessne, Esq. is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of the order.

EXHIBIT A

SETTLEMENT AGREEMENT BETWEEN LIQUIDATING TRUSTEE AND ENERGY CAPITAL WILCOX, J.V.

THIS SETTLEMENT AGREEMENT (the "**Agreement**") is made by and between (a) Maria M. Yip, solely in her capacity as the Liquidating Trustee of the Smart Money Liquidating Trust (the "**Liquidating Trustee**"), and (b) Energy Capital Wilcox, J.V. ("**ECW**"). The Liquidating Trustee and ECW are together referred to as the "**Parties**."

I. Recitals:

Whereas:

a. On June 8, 2016, the Debtors¹ filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court, Middle District of Florida (the "**Bankruptcy Court**"). The Debtors are jointly administered (ECF No. 25), and on December 28, 2016, were substantively consolidated *nunc pro tunc* to the petition date (ECF No. 303). On February 15, 2017, the Court entered an order (the "**Confirmation Order**") (ECF No. 414) confirming the Debtors' plan of liquidation, the terms of which are reflected in the Second Amended Plan of Liquidation (ECF No. 400) (the "**Plan**"). On March 21, 2017, in accordance with paragraph 19 of the Confirmation Order, each of the Debtors' cases were closed, except for the lead case *Pelican Real Estate LLC*, Case No. 6:16-bk-03817-CCJ, which remains open.

b. On the Effective Date of March 2, 2017 (ECF No. 428), the Smart Money Liquidating Trust (the "**Liquidating Trust**") came into existence, and the Liquidating Trust Assets² transferred to the Liquidating Trust. *See* Plan, Pars. 1.40-1.42 and 6.3. The Liquidating Trust is governed by the Liquidating Trust Agreement (ECF No. 449) and Maria M. Yip is the Liquidating Trustee of the Liquidating Trust. *Id.*

c. Pursuant to the Liquidating Trust Agreement, the Liquidating Trustee shall have the power to, among other things, (a) liquidate the Liquidating Trust Assets, (b) take actions reasonably necessary or appropriate to effectuate and implement the terms of the Plan, (c) protect and enforce the rights to the Liquidating Trust Assets, (d) compromise and settle claims in favor of and against the Liquidating Trust, and (e) exercise all powers vested in Debtors pursuant to the Bankruptcy Code as may be necessary to carry out the provisions of the Plan. *See* Liquidating Trust Agreement, Sec. 4.01(i), (iii), (v), (vi), and (xii).

¹ The Debtors (with the last four digits of their taxpayer identification numbers) are: (i) Pelican Real Estate, LLC (6190); (ii) Pelican Portfolios, LLC (2896); (iii) Pelican Management, LLC (3093); (iv) Smart Money Secured Income Fund, LLC (0664); (v) Smart Money Secured Income Fund Manager, LLC (2762); (vi) Turnkey Investment Fund, LLC (9311); (vii) Turnkey Investment Fund Manager, LLC (1580); (viii) Accelerated Asset Group, LLC (6166); and (ix) SMFG, Inc. (9753).

² Defined in Paragraph 1.39 of the Plan as "all Property of the Estate, less the Smart Money Insurance Assets." The Smart Money Insurance Assets consist of certain furniture, fixtures, and equipment which are not relevant for purposes of this Agreement. *See* Plan, Par. 1.65.

d. The Liquidating Trust Assets include various oil and gas investments, including interests in the Energy Capital Wilcox, J.V. (the "**JV Interests**"), evidenced by the following subscription agreements:

- (1) Amended Subscription Agreement with Turnkey Investment Fund, LLC ("**TIF**") dated July 16, 2015, for 4 participation units of ECW at \$248,000;
- (2) Amended Subscription Agreement with TIF dated July 16, 2015, for 13.5 participation units of ECW at \$837,000;
- (3) Amended Subscription Agreement with TIF dated July 16, 2015, for 14.5 units at \$899,000; and
- (4) Subscription Agreement with Smart Money Secured Income Fund, LLC ("**SIF**") dated August 1, 2014, for 8 participation units of ECW at \$469,000;

and governed by the Energy Capital Wilcox, Joint Venture Agreement, dated May 1, 2014.

e. The Liquidating Trust Assets also include potential litigation claims against ECW arising out of ECW's various dealings and arrangements with SIF and TIF (through their officer Ron Fossum), including potential fraudulent transfer claims and tort claims.

f. ECW disputes and denies any liability under the Liquidating Trustee's claims and asserts its own claims against the Liquidating Trustee based on asserted capital calls. The Liquidating Trustee disputes and denies any liability under ECW's claims.

g. Following settlement discussions, the Parties desire to fully and completely resolve all disputes and claims among them.

Now, therefore, for good, adequate, and mutual consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties, the Parties agree as follows:

II. Terms:

1. The Parties admit that each of the recitals listed above are true and correct, and the recitals are incorporated into this Agreement.

2. ECW will pay the sum of \$12,500.00 to the Liquidating Trust in satisfaction of all claims the Liquidating Trust and the Debtors may have against ECW, Energy Capital Fund, LLC, SRS Properties, LLC, Daniel Smith, and Shannon Smith (collectively, the "**ECW Parties**") upon the date that an order of the Bankruptcy Court approving the sale of the JV Interests, as described below, becomes final and non-appealable (the "**Effective Date**").

3. Effective as of the Effective Date, and subject to no other conditions precedent or contingencies, the Liquidating Trustee, on behalf of the Liquidating Trust and the Debtors, releases and forever discharges the ECW Parties together with each and all of the ECW Parties' current and former agents, attorneys, employees, officers, directors, affiliates, companies, family members, heirs, insurers, estates, and assigns (collectively, the "**ECW Released Parties**"), of and from all action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts,

reckonings, bills, specialties, covenants, contracts, controversies, agreements, promises, rescissions, damages, judgments, executions, claims and demands whatsoever, at law or in equity, whether known or unknown, intentional or unintentional, which the Liquidating Trust ever had, now have, shall or may have, against the ECW Released Parties for, upon or by reason or any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents, including but not limited to all claims or causes of action whatsoever which involve or may involve, directly or indirectly, in any way, the JV Interests.

4. Effective as of the Effective Date, and subject to no other conditions or contingencies, the ECW Parties, on behalf of themselves, their predecessors, their successors, their assigns, their officers, their directors, their agents, their attorneys, their insurers, their owners, their beneficiaries, and any party who acquires their assets in the future, releases and forever discharges the Liquidating Trust together with each and all of the Liquidating Trusts' current and former trustees, agents, attorneys, employees, officers, directors, affiliates, companies, successors, insurers, estates, and assigns (collectively, the "**Liquidating Trust Parties**"), of and from all action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bills, specialties, covenants, contracts, controversies, agreements, promises, rescissions, damages, judgments, executions, claims and demands whatsoever, at law or in equity, whether known or unknown, intentional or unintentional, which the ECW Parties ever had, now have, shall or may have, against the Liquidating Trust Parties for, upon or by reason or any matter, cause or thing whatsoever, from the beginning of the world to the day of these presents, including, but not limited to, all claims or causes of action whatsoever which involve or may involve, directly or indirectly, in any way, the JV Interests. For the avoidance of doubt, the ECW Parties waive any right to a claim against the substantively consolidated bankruptcy estate of the Debtors and the Liquidating Trust including, but not limited to, any pre or post-petition claims related to capital calls, except that this Agreement does not in any way release or effect any claims of the ECW Parties against any party who purchases or is otherwise assigned the JV Interests for any pre-petition, outstanding, or future capital calls, which claims will solely be released as an obligation of the Liquidating Trust but will continue with and follow the JV Interests as an obligation of any purchaser. Notwithstanding the foregoing, the Parties do not release any of their rights to enforce the terms of this Agreement.

5. The ECW Parties shall fully cooperate in the utmost good faith with the sale of the JV Interests by the Liquidating Trustee pursuant to a sale order to be obtained from the Bankruptcy Court which includes, but is not limited to, (a) expeditiously reviewing the qualifications of any potential purchasers of the JV Interests as provided in, and under the standards of, any applicable operating agreement, subscription agreement, or any other such agreement related to the JV Interests, (b) include expeditious and good faith review and determination relating to any "accredited investor" requirements as such term is defined in Rule 501 of Regulation D under the Securities Act of 1933 that may be applicable to the sale of the JV Interests, and (c) any and all actions necessary to effectuate the sale of the JV Interests. Such sale will involve a minimum 60-day marketing period beginning with the date upon which the Bankruptcy Court enters an order approving a motion to establish sale procedures to be filed by the Liquidating Trustee in association with the execution of this Agreement. The ECW Parties agree that for purposes of this Agreement only, such sale is subject to, but not prohibited by, the terms of the participation unit certificates, subscription agreements, or other contractual or legal documents related to the JV Interests.

6. ECW agrees to extend the deadline for the Liquidating Trustee to assume or reject any joint venture or other executory agreements with ECW through the date upon which the order of the Bankruptcy Court approving the sale of the JV Interests becomes final and non-appealable, but in no case beyond 120 days from the date of an order approving sale procedures, after which point if the sale is not consummated or the Liquidating Trustee does not seek to assume any joint venture or other executory agreements with ECW, then the Liquidating Trustee shall be deemed to have automatically rejected its interests in the JV Interests effective on the 121st day, upon which occurrence this Agreement shall terminate, as will all obligations and releases provided herein.

7. No later than two weeks from full execution of this Agreement, the Liquidating Trustee will file a motion to sell the JV Interests with the Bankruptcy Court to sell the Liquidating Trustee's right, title, and interest, in the JV Interests, "as is, where is," with no representations or warranties of any kind, subject to higher and better offers and Bankruptcy Court approval, under a sealed bid auction or other process approved by the Liquidating Trustee and the Bankruptcy Court. The Liquidating Trustee shall provide a reasonable time period and process for ECW to review and make a determination regarding the qualification of any potential or actual bidders.

8. On the Effective Date, all agreements between the Parties shall be terminated and the Parties shall have no further obligations between or among them except as provided in this Agreement.

9. The ECW Parties have all necessary right, power and authorization to sign and perform all the obligations under this Agreement, as applicable to the respective ECW Parties.

10. This Agreement may be executed in duplicate original counterparts, each of which shall be considered an original for all purposes. Facsimile signatures shall be deemed as effective as original signatures.

11. The Parties agree that this Agreement and any disputes arising under it shall be governed under the laws of the State of Florida and consent to jurisdiction by the Bankruptcy Court. Having been drafted mutually by the Parties, the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

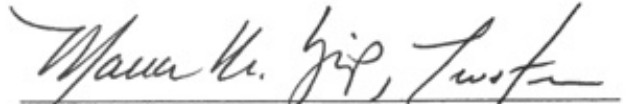
12. The Parties acknowledge that they have had ample opportunity to consult with competent legal counsel of their choice regarding this Agreement, have not relied on any representations or statement of any other party or counsel with respect to the subject matter of this Agreement.

13. The Parties will each bear their own attorneys' fees and costs arising out of or relating to their disputes, as well as the negotiation and preparation of this Agreement. Notwithstanding the foregoing, the Parties agree that in the event any action is brought to enforce the terms of this Agreement, the prevailing party in such enforcement action shall be entitled to recover all costs, expenses and attorneys' fees incurred in connection with same in all courts, including the appellate courts.

14. This Agreement is subject to Bankruptcy Court approval.

IN WITNESS WHEREOF, this Agreement has been executed on the dates acknowledged below.

Dated: MARCH 7, 2018



Maria M. Yip, solely in her capacity as Liquidating
Trustee of the Smart Money Liquidating Trust

STATE OF FLORIDA
COUNTY OF MIAMI - DADE

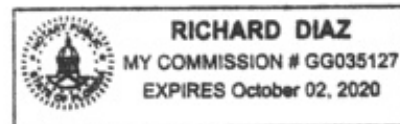
BEFORE ME, the undersigned authority, this day personally appeared MARIA M. YIP, who is personally known to me or has produced _____ as identification and acknowledged to me that he executed this Agreement in the capacity herein stated and for the purposes and considerations herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 7th day of March, 2018.



NOTARY PUBLIC

My Commission Expires: 10/2/20



Dated: 3/7/18

Energy Capital Wilcox, J.V.

By: [Signature]

Print Name: Daniel Smith

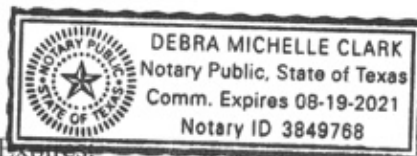
Print Title: Manager of Energy Capital Fund, LLC

STATE OF Tyler

COUNTY OF Smith

BEFORE ME, the undersigned authority, this day personally appeared Daniel Smith, who is personally known to me or has produced _____ as identification and acknowledged to me that he executed this Agreement in the capacity herein stated and for the purposes and considerations herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 7 day of March, 2018.



Debra Clark
NOTARY PUBLIC

My Commission Expires:

3-19-21

Dated: 3/7/18

Energy Capital Fund, LLC

By: [Signature]

Print Name: Daniel Smith

Print Title: Manager

STATE OF Tyler

COUNTY OF Smith

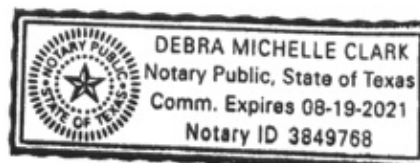
BEFORE ME, the undersigned authority, this day personally appeared Daniel Smith, who is personally known to me or has produced _____ as identification and acknowledged to me that he executed this Agreement in the capacity herein stated and for the purposes and considerations herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 7 day of March, 2018.

Debra Clark
NOTARY PUBLIC

My Commission Expires:

3-19-21



Dated: 3/7/18

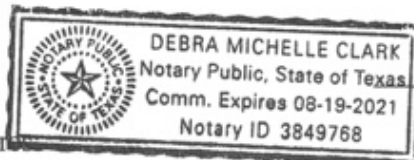
Daniel Smith
Daniel Smith

STATE OF Texas
COUNTY OF Smith

BEFORE ME, the undersigned authority, this day personally appeared Daniel Smith who is personally known to me or has produced _____ as identification and acknowledged to me that he executed this Agreement in the capacity herein stated and for the purposes and considerations herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 7 day of March, 2018.

My Commission Expires
8-19-21



Debra Clark
NOTARY PUBLIC

Dated: 3/7/18

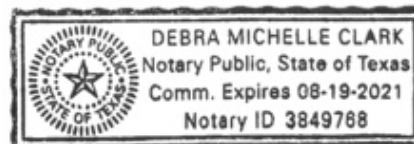
Shannon Smith
Shannon Smith

STATE OF Texas
COUNTY OF Smith

BEFORE ME, the undersigned authority, this day personally appeared Shannon Smith who is personally known to me or has produced _____ as identification and acknowledged to me that he executed this Agreement in the capacity herein stated and for the purposes and considerations herein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this _____ day of March, 2018.

My Commission Expires:
8-19-21



Debra Clark
NOTARY PUBLIC

Label Matrix for local noticing
113A-6
Case 6:16-bk-03817-CCJ
Middle District of Florida
Orlando
Wed Jan 31 09:44:54 EST 2018

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Suite 900
Atlanta, GA 30326-1382

Ultimate Vitality
c/o Linell King
180 Sharwood Drive
Naples, FL 34110-5720

United States Trustee
c/o Jill E. Kelso, Trial Attorney
George C. Young Federal Bldg.
400 W. Washington St., Suite 1100
Orlando FL 32801-2210

Victoria Chen
10253 Fawnbrook Court
Highlands Ranch, CO 80130-6895

Vinell and Priscilla Ayers
3526 Wythe
Memphis, TN 38135-8235

Vu Tran
2720 Deerpark Dr
San Diego, CA 92110-1017

WORKMAN INVESTMENTS LLC -
7812 Melrose Ln SE
Snoqualmie, WA 98065-8953

Wang Chung Ming
10F, No 27, Ln 18 Quanxing Rd
Taishan Dist.
New Taipei City 243
Taiwan ROC

Washington State Dept. of
Revenue - Executive Office
PO Box 47450
Olympia, WA 98504-7450

Weeze, LLC
2635 Sunset Dr
Bellingham, WA 98225-2532

Wendy & Dorkis Lopez
4698 Casamm Avenue
Memphis, TN 38128

Will and Pauline Fox -
3400 W Lake Sammamish SE
Bellevue, WA 98008-5841

William Lanham
1101 Robinhood
Memphis, TN 38111-5642

William Lee
3403 Yosemite St
Denver, CO 80238-3395

William R Bowers
6136 Newport Ct SW
Olympia, WA 98512-7935

Yap Hoe -
No 4, Lane 1194
Zhongzheng Rd, Zhonghe Dist.
New Taipei City
Taiwan ROC 235

Yvette Harris
4217 Windermere
Memphis, TN 38128-2063

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified
by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Dell Financial Services
c/o DFS Customer Care Dept
PO Box 81577
Austin TX 79708-1577

Lexus Financial Services
PO Box 5855
Carol Stream, IL 60197-5855

Premier Property Management
Group
PO Box 382566
Germantown, TN 38183

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u) Broad and Cassel LLP	(u) Jessica Allgeir	(u) Janet Anderson
(u) Laura Anderson	(u) Reginald Anderson	(u) Barbara Bolinger
(u) Loren Bolinger	(u) Dance Bigelow Sharp & Co.	(u) Samuel Hammer Hammer Herzog and Associates P.A.
(u) Internal Revenue Service, by and through t	(u) Morris Auction Group LLC	(u) Kelsey Nazar Krigel & Krigel, P.C.
(u) Richard A. Stewart	(u) Maria Yip	(d) Benito Carranza - 3142 West Kings Avenue Phoenix, AZ 85053-3030
(d) Brian Fouts - PO Box 662 Fall City, WA 98024-0662	(d) Kathy Khodi 11830 Upland Way Cupertino, CA 95014-5106	(d) Nathan & Maria Doty 4515 Brady Road Colorado Springs, CO 80915-1309
(d) Robin DelGrosso 2417 109th Avenue SE Lake Stevens WA 98258-5178	(d) Silvia Carranza - 3142 West Kings Avenue Phoenix, AZ 85053-3030	(u) Note: Entries with a '+' at the end of the name have an email address on file in CMECF ----- Note: Entries with a '-' at the end of the name have filed a claim in this case

End of Label Matrix
Mailable recipients 263
Bypassed recipients 21
Total 284